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7  
8 **BEFORE THE**  
**BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
10

11 In the Matter of the Accusation	)	NO. AC-94-1
Against:	)	
12 KIM JEFFREY CANTRELL	)	<u>DEFAULT DECISION AND</u>
13 P. O. Box 1108	)	<u>ORDER OF THE BOARD</u>
Roseville, CA 95661-0593	)	
14 Certified Public Accountant	)	[Gov. Code §11520]
15 Certificate No. CPA 23561	)	
16 Respondent.	)	

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18  
19 Respondent Kim Jeffrey Cantrell, having been served  
20 with the Accusation, Statement to Respondent, and Notice of  
21 Defense forms as provided by Government Code sections 11503 and  
22 11505, and having failed to file a Notice of Defense within the  
23 time allowed by section 11506 of said code, and the default of  
24 said respondent having been duly noted, the Board of Accountancy  
25 has determined that respondent has waived his right to a hearing  
26 to contest the merits of said Accusation; that respondent is in  
27 default; and that this agency will take action on the Accusation

1 and evidence herein without a hearing, and makes the following  
2 findings of fact, determination of issues, and order, based upon  
3 applicable statutes.

4 STATUTES

5 1. California Government Code section 11506 provides,  
6 in pertinent part:

7 "(b) The respondent shall be entitled to a hearing on the  
8 merits if he files a notice of defense, and any such notice shall  
9 be deemed a specific denial of all parts of the accusation not  
10 expressly admitted. Failure to file such notice shall constitute  
11 a waiver of respondent's right to a hearing, but the agency in  
12 its discretion may nevertheless grant a hearing. ..."

13 2. California Government Code section 11520 provides,  
14 in pertinent part:

15 "(a) If the respondent fails to file a notice of  
16 defense or to appear at the hearing, the agency may take  
17 action based upon the respondent's express admissions or  
18 upon other evidence and affidavits may be used as evidence  
19 without any notice to respondent; ..."

20 3. The Board of Accountancy, Department of Consumer  
21 Affairs, is authorized to revoke respondent's Certified Public  
22 Accountant Certificate pursuant to the following provisions of  
23 the California Business and Professions Code:

24 a. Section 5100 provides that the Board may revoke,  
25 suspend or refuse to renew any permit or certificate issued by  
26 the Board, or may censure the holder of any such permit or  
27 certificate for unprofessional conduct, including dishonesty,

1 fraud or gross negligence in the practice of public accountancy  
2 [Section 5100(c)]; the wilful violation of a board rule [Section  
3 5100(f)]; breach of fiduciary duty [Section 5100(h)]; and  
4 embezzlement, theft, and/or misappropriation of funds [Section  
5 5100(j)].

6 FINDINGS OF FACT

7 4. The Accusation against Kim Jeffrey Cantrell  
8 ("respondent") in case number AC-94-1 was made and filed with the  
9 Board of Accountancy, Department of Consumer Affairs of the State  
10 of California ("Board") on November 4, 1993, by Complainant Carol  
11 B. Sigmann, the Executive Officer of the Board, in her official  
12 capacity.

13 5. On or about September 24, 1976, Certified Public  
14 Accountant Certificate No. CPA 23561 was issued by the  
15 Accountancy to Kim Jeffrey Cantrell ("respondent"). Respondent's  
16 certificate was invalid between August 31, 1988 and June 7, 1990,  
17 for failure to complete required continuing education courses.  
18 The certificate expired on August 31, 1992 and has not been  
19 renewed.

20 6. On or about November 18, 1993, Nettie M. Thompson,  
21 an employee of the Office of the Attorney General, sent by  
22 certified mail (P 048 588 409) a copy of Accusation No. AC-94-1,  
23 Statement to Respondent, Government Code sections 11507.5,  
24 11507.6, and 11507.7, the Notice of Defense form, and a Request  
25 for Discovery, to respondent's address of record with the  
26 Accountancy which was and is P. O. Box 1108, Roseville,  
27 California 95661-0593. In or about November or December, the

1   aforementioned documents were returned to the Office of the  
2   Attorney General marked "Undeliverable as Addressed. Forwarding  
3   Order Expired." by the U.S. Postal Service.

4               On or about December 6, 1993, Ms. Thompson sent by  
5   certified mail (P 048 588 411) another copy of the above-  
6   described documents to respondent at 155 Tomlinson Avenue,  
7   Folsom, CA 95630. The Domestic Return Receipt was returned to  
8   the Office of the Attorney General, with a signature in Block #5  
9   (which does not appear to be the signature of the  
10  addressee/respondent, and which further provided, in Block #8, as  
11  "Addressee's Address": 9580 Oak Ave Pky #7253, Folsom, CA 95630,  
12  and, in Block #7, the date 12-10-93 as the date of delivery.

13              On or about March 25, 1994, Imelda Salvador, an  
14  employee of the Office of the Attorney General, sent by certified  
15  mail (P 048 587 557) and by first class mail copies of Accusation  
16  No. AC-94-1, Statement to Respondent, Government Code sections  
17  11507.5, 11507.6, and 11507.7, the Notice of Defense form, and a  
18  Request for Discovery, to respondent's address of record with the  
19  Accountancy which was and is P. O. Box 1108, Roseville,  
20  California 95661-0593. On or about March 30, both of the  
21  aforementioned packages were returned to the Office of the  
22  Attorney General marked "Undeliverable as Addressed. Forwarding  
23  Order Expired" by the U.S. Postal Service.

24              On or about May 17, 1994, packages containing the same  
25  documents were sent, certified mail, by Ms. Salvador to two  
26  additional addresses: 9580 Oak Avenue Parkway, #7253, Folsom,  
27  California 95630, and 155 Tomlinson Avenue, Folsom, California,

1 95630. The above-described service was effective as a matter of  
2 law pursuant to the provisions of California Government Code  
3 section 11505, subdivision (c).

4 7. Respondent failed to file a Notice of Defense  
5 within 15 days after service upon him of the Accusation and  
6 therefore waived his right to a hearing on the merits of  
7 Accusation No. AC-94-1.

8 8. Pursuant to its authority under Government Code  
9 section 11520, and based on the evidence before it, the Board  
10 finds that the allegations set forth in Accusation No. AC-94-1,  
11 which are summarized below, are true:

12 a. Respondent failed to timely file tax returns for  
13 client R. B., resulting in late penalties and interest to the  
14 client, and also failed to return the records to the client, in  
15 violation of 5100(c) and 5100(h).

16 b. In connection with his client M. J., respondent took  
17 funds from the client and falsely represented that he made  
18 payments on her behalf to the EDD whereas in truth and in fact,  
19 he deposited the funds to his personal bank account. He also  
20 failed to prepare tax returns for M.J., despite being paid \$2400  
21 to do so, and failed to return the money paid or the records to  
22 the client, who will be obligated to pay substantial penalties  
23 and interest. This conduct violates Sections 5100(c), 5100(h),  
24 5100(j), and Rule 68.

25 c. In connection with his client R. C., respondent  
26 failed to prepare tax returns for R. C., despite being paid \$2500  
27 to do so, and failed to return the money paid or the records to

1 the client, who has incurred substantial penalties and interest  
2 as a result of the failure to timely file the tax returns. This  
3 conduct violates Sections 5100(c), 5100(h), 5100(j), and Rule 68.

4 d. Between June and December 1992, respondent failed to  
5 respond to numerous telephoned and written inquiries regarding  
6 the complaints on file with the Board, in violation of Rule 54.1.

7 e. During the periods from August 31, 1988, through  
8 June 7, 1990, and from August 31, 1992, until at least November,  
9 1993, respondent practiced public accounting without a valid  
10 certificate, in violation of Sections 5050, 5055 and Rule 87.

#### 11 DETERMINATION OF ISSUES

12 1. Respondent is subject to disciplinary action by  
13 reason of the Findings of Fact above, and cause for revocation  
14 has been established, separately and severally, based upon each  
15 of them and for all of them.

16 2. Respondent is subject to being ordered to pay the  
17 Board's costs by reason of his violation of Business and  
18 Professions Code Sections 5100(c), 5100(h) and 51200(j) and by  
19 reason of the Findings of Fact above.

#### 20 ORDER

21 WHEREFORE, for the aforesaid causes, the Board of  
22 Accountancy makes its order:

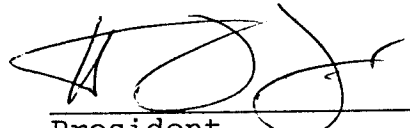
23 1. Revoking Certified Public Accountant Certificate  
24 CPA 23561 issued to Kim Jeffrey Cantrell.

25 Respondent shall not be deprived of making any further  
26 showing by way of mitigation. However, such showing must be made  
27 to the Board of Accountancy, 2000 Evergreen St., Suite 250,

1 Sacramento CA 95815-3832, prior to the effective date of this  
2 Decision.

3 This Decision shall become effective on the  
4 14th day of September, 1994.

5 Dated and signed this 15th day of August,  
6 1994.

7   
8 President  
9 Board of Accountancy  
10 Department of Consumer Affairs

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Attorneys for Complainant

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	No. AC-94-1
Against:	)	
KIM JEFFREY CANTRELL, C.P.A.	)	<u>ACCUSATION</u>
P. O. Box 1108	)	
Roseville, CA 95661-0593	)	
Certificate No. CPA 23561	)	
Respondent.	)	

Carol B. Sigmann charges and alleges:

1. She is the Executive Officer of the California Board of Accountancy and makes these charges and allegations in her official capacity.

2. Certificate No. CPA 23561 (Certified Public Accountant) was issued to Respondent, Kim Jeffrey Cantrell by the California Board of Accountancy on September 24, 1976. Said certificate is not currently in full force and effect and expired on September 1, 1992.

3. The Board retains continuing jurisdiction over respondent's certificate as a Certified Public Accountant



1 pursuant to Section 118 (b) of the Business and Professions Code  
2 despite its expiration on September 1, 1992.

3           4.    Grounds exist for disciplinary action against  
4 Respondent's certificate as a Certified Public Accountant  
5 pursuant to Business and Professions Code section 5100(c)  
6 (Dishonesty, Fraud or Gross Negligence in the Practice of Public  
7 Accountancy) and section 5100(h) ( Breach of Fiduciary  
8 Responsibility) as follows:

9           On April 1, 1992, Robert Beva delivered personal  
10 records to respondent and retained respondent for the preparation  
11 of Beva's 1991 State and Federal tax returns. On April 1, 1992,  
12 respondent promised that the tax returns would be complete on  
13 April 3, 1992. Respondent did not complete the tax returns on  
14 April 3, 1992, and did not respond to numerous phone calls from  
15 Beva nor could respondent be contacted by Beva despite weekly  
16 visits by Beva to respondent's home office between April 8, 1992  
17 and August 4, 1992. Beva received the completed tax returns from  
18 respondent on August 18, 1992. The delays in preparing Beva's  
19 tax returns resulted in late penalties and interest being charged  
20 to Beva by the IRS and the Franchise Tax Board (FTB).

21           5.    Grounds exist for disciplinary action against  
22 respondent's certificate as a Certified Public Accountant  
23 pursuant to Business and Professions Code sections 5100(c),  
24 5100(h), 5100(j) (Embezzlement, Theft, Misappropriation of Funds)  
25 and 5100(f) in conjunction with Rule 68 (Failure to Return Client  
26 Records) as follows:

27 //

1 (a) On August 1, 1990, and on August 6, 1990,  
2 Mary Joseph paid respondent \$410.05 and \$467.57  
3 respectively for reimbursement to respondent for  
4 payments represented to Joseph by respondent that he  
5 had made to the Employment Development Department (EDD)  
6 for Joseph's payroll and sales tax obligations. In  
7 fact respondent's representations that he had made the  
8 payments to EDD was false and known by respondent to be  
9 false. The \$410.05 and \$467.57 payments were deposited  
10 by respondent in respondent's personal bank account and  
11 were never paid to EDD.

12 (b) During 1991 and 1992 Mary Joseph paid  
13 respondent \$2400 to prepare her 1990 and 1991  
14 individual and corporate tax returns. Respondent  
15 failed to prepare the tax returns for which he had been  
16 retained. Despite numerous demands by Joseph and her  
17 new accountant, Michael Hawes, respondent failed to  
18 return either the money paid to him or to return  
19 Joseph's records. Because of the failure by respondent  
20 to file timely tax returns Joseph will be obligated to  
21 pay substantial penalties and interest to the IRS and  
22 the FTB.

23 6. Grounds exists for disciplinary action against  
24 respondent's certificate as a Certified Public Accountant  
25 pursuant to Business and Professions Code sections 5100(c),  
26 5100(h), 5100(j) and 5100(f) in conjunction with Rule 68 (Failure  
27 to Return Client Records), as follows:

1           During 1992 Robert Cameto paid respondent \$2500 for the  
2 preparation of 1991 corporate tax returns. Respondent failed to  
3 prepare the tax returns for which he was retained. Despite  
4 numerous demands by Cameto respondent failed to return the money  
5 paid to him or to return Cameto's records. Because of the  
6 failure to timely file the 1991 tax returns substantial penalties  
7 and interest expenses payable to the IRS and FTB have been  
8 incurred.

9           7. Grounds exists for disciplinary action against  
10 respondent's certificate as a Certified Public Accountant  
11 pursuant to Business and Professions Code section 5100(f) in  
12 conjunction with Rule 54.1 of Title 16 of the California Code of  
13 Regulations (Failure to Respond to Board Inquiry) as follows:

14           On August 31, 1992, November 12, 1992 and November 19,  
15 1992, the Board mailed letters to respondent asking him to  
16 respond to the status of his license and to complaints filed  
17 against him. Between June 1992 and December 1992 the Board left  
18 numerous requests on respondent's telephone answering machine for  
19 respondent to contact Board staff regarding the complaints filed  
20 with the Board against him. Respondent failed to respond to any  
21 of the letters or telephone messages.


22           8. Grounds exists for disciplinary action against  
23 respondent's certificate as a Certified Public Accountant  
24 pursuant to Business and Professions Code sections 5050 and 5055  
25 and Rule 87 of Title 16 of the California Code of Regulations  
26 (Public Practice Prohibited Without Qualifying Continuing  
27 Education) as follows:

1 Respondent's certificate as a Certified Public  
2 Accountant was invalid between August 31, 1988 and June 7, 1990  
3 for failure to complete the required continuing education  
4 courses. Respondent's certificate expired on August 31, 1992  
5 for failure to pay the renewal fee and to complete the required  
6 continuing education courses. Said certificate has not been  
7 renewed. During the periods from August 31 1988 through June 7,  
8 1990 and from August 31, 1992 to the present respondent has  
9 practiced public accounting without a valid certificate.

10 Pursuant to Business and Professions Code section 5107  
11 it is requested that the proposed decision in this proceeding  
12 include an order directing respondent to pay to the Board all  
13 reasonable costs of investigation and prosecution of the case  
14 including but not limited to attorney's fees.

15 Therefore, it is requested that upon proof of the  
16 matters alleged herein that Respondent's certificate as a  
17 Certified Public Accountant be revoked and that the Board take  
18 such other action as may be deemed proper.

19 DATE: November 4, 1993

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21   
22 CAROL SIGMANN, Executive Officer  
23 Board of Accountancy  
24 Department of Consumer Affairs  
State of California

Complainant

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